

SHB 1619 - S COMM AMD
By Committee on Judiciary

ADOPTED 04/08/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 46.61.5055 and 1999 c 324 s 5, 1999 c 274 s 6, and
4 1999 c 5 s 1 are each reenacted and amended to read as follows:

5 (1) A person who is convicted of a violation of RCW 46.61.502 or
6 46.61.504 and who has no prior offense within seven years shall be
7 punished as follows:

8 (a) In the case of a person whose alcohol concentration was less
9 than 0.15, or for whom for reasons other than the person's refusal to
10 take a test offered pursuant to RCW 46.20.308 there is no test result
11 indicating the person's alcohol concentration:

12 (i) By imprisonment for not less than one day nor more than one
13 year. Twenty-four consecutive hours of the imprisonment may not be
14 suspended or deferred unless the court finds that the imposition of
15 this mandatory minimum sentence would impose a substantial risk to the
16 offender's physical or mental well-being. Whenever the mandatory
17 minimum sentence is suspended or deferred, the court shall state in
18 writing the reason for granting the suspension or deferral and the
19 facts upon which the suspension or deferral is based. In lieu of the
20 mandatory minimum term of imprisonment required under this subsection
21 (1)(a)(i), the court may order not less than fifteen days of electronic
22 home monitoring. The offender shall pay the cost of electronic home
23 monitoring. The county or municipality in which the penalty is being
24 imposed shall determine the cost. The court may also require the
25 offender's electronic home monitoring device to include an alcohol
26 detection breathalyzer, and the court may restrict the amount of
27 alcohol the offender may consume during the time the offender is on
28 electronic home monitoring; and

29 (ii) By a fine of not less than three hundred fifty dollars nor

1 more than five thousand dollars. Three hundred fifty dollars of the
2 fine may not be suspended or deferred unless the court finds the
3 offender to be indigent; or

4 (b) In the case of a person whose alcohol concentration was at
5 least 0.15, or for whom by reason of the person's refusal to take a
6 test offered pursuant to RCW 46.20.308 there is no test result
7 indicating the person's alcohol concentration:

8 (i) By imprisonment for not less than two days nor more than one
9 year. Two consecutive days of the imprisonment may not be suspended or
10 deferred unless the court finds that the imposition of this mandatory
11 minimum sentence would impose a substantial risk to the offender's
12 physical or mental well-being. Whenever the mandatory minimum sentence
13 is suspended or deferred, the court shall state in writing the reason
14 for granting the suspension or deferral and the facts upon which the
15 suspension or deferral is based. In lieu of the mandatory minimum term
16 of imprisonment required under this subsection (1)(b)(i), the court may
17 order not less than thirty days of electronic home monitoring. The
18 offender shall pay the cost of electronic home monitoring. The county
19 or municipality in which the penalty is being imposed shall determine
20 the cost. The court may also require the offender's electronic home
21 monitoring device to include an alcohol detection breathalyzer, and the
22 court may restrict the amount of alcohol the offender may consume
23 during the time the offender is on electronic home monitoring; and

24 (ii) By a fine of not less than five hundred dollars nor more than
25 five thousand dollars. Five hundred dollars of the fine may not be
26 suspended or deferred unless the court finds the offender to be
27 indigent; and

28 (iii) By a court-ordered restriction under RCW 46.20.720.

29 (2) A person who is convicted of a violation of RCW 46.61.502 or
30 46.61.504 and who has one prior offense within seven years shall be
31 punished as follows:

32 (a) In the case of a person whose alcohol concentration was less
33 than 0.15, or for whom for reasons other than the person's refusal to
34 take a test offered pursuant to RCW 46.20.308 there is no test result
35 indicating the person's alcohol concentration:

36 (i) By imprisonment for not less than thirty days nor more than one
37 year and sixty days of electronic home monitoring. The offender shall

1 pay for the cost of the electronic monitoring. The county or
2 municipality where the penalty is being imposed shall determine the
3 cost. The court may also require the offender's electronic home
4 monitoring device include an alcohol detection breathalyzer, and may
5 restrict the amount of alcohol the offender may consume during the time
6 the offender is on electronic home monitoring. Thirty days of
7 imprisonment and sixty days of electronic home monitoring may not be
8 suspended or deferred unless the court finds that the imposition of
9 this mandatory minimum sentence would impose a substantial risk to the
10 offender's physical or mental well-being. Whenever the mandatory
11 minimum sentence is suspended or deferred, the court shall state in
12 writing the reason for granting the suspension or deferral and the
13 facts upon which the suspension or deferral is based; and

14 (ii) By a fine of not less than five hundred dollars nor more than
15 five thousand dollars. Five hundred dollars of the fine may not be
16 suspended or deferred unless the court finds the offender to be
17 indigent; and

18 (iii) By a court-ordered restriction under RCW 46.20.720; or

19 (b) In the case of a person whose alcohol concentration was at
20 least 0.15, or for whom by reason of the person's refusal to take a
21 test offered pursuant to RCW 46.20.308 there is no test result
22 indicating the person's alcohol concentration:

23 (i) By imprisonment for not less than forty-five days nor more than
24 one year and ninety days of electronic home monitoring. The offender
25 shall pay for the cost of the electronic monitoring. The county or
26 municipality where the penalty is being imposed shall determine the
27 cost. The court may also require the offender's electronic home
28 monitoring device include an alcohol detection breathalyzer, and may
29 restrict the amount of alcohol the offender may consume during the time
30 the offender is on electronic home monitoring. Forty-five days of
31 imprisonment and ninety days of electronic home monitoring may not be
32 suspended or deferred unless the court finds that the imposition of
33 this mandatory minimum sentence would impose a substantial risk to the
34 offender's physical or mental well-being. Whenever the mandatory
35 minimum sentence is suspended or deferred, the court shall state in
36 writing the reason for granting the suspension or deferral and the
37 facts upon which the suspension or deferral is based; and

1 (ii) By a fine of not less than seven hundred fifty dollars nor
2 more than five thousand dollars. Seven hundred fifty dollars of the
3 fine may not be suspended or deferred unless the court finds the
4 offender to be indigent; and

5 (iii) By a court-ordered restriction under RCW 46.20.720.

6 (3) A person who is convicted of a violation of RCW 46.61.502 or
7 46.61.504 and who has two or more prior offenses within seven years
8 shall be punished as follows:

9 (a) In the case of a person whose alcohol concentration was less
10 than 0.15, or for whom for reasons other than the person's refusal to
11 take a test offered pursuant to RCW 46.20.308 there is no test result
12 indicating the person's alcohol concentration:

13 (i) By imprisonment for not less than ninety days nor more than one
14 year and one hundred twenty days of electronic home monitoring. The
15 offender shall pay for the cost of the electronic monitoring. The
16 county or municipality where the penalty is being imposed shall
17 determine the cost. The court may also require the offender's
18 electronic home monitoring device include an alcohol detection
19 breathalyzer, and may restrict the amount of alcohol the offender may
20 consume during the time the offender is on electronic home monitoring.
21 Ninety days of imprisonment and one hundred twenty days of electronic
22 home monitoring may not be suspended or deferred unless the court finds
23 that the imposition of this mandatory minimum sentence would impose a
24 substantial risk to the offender's physical or mental well-being.
25 Whenever the mandatory minimum sentence is suspended or deferred, the
26 court shall state in writing the reason for granting the suspension or
27 deferral and the facts upon which the suspension or deferral is based;
28 and

29 (ii) By a fine of not less than one thousand dollars nor more than
30 five thousand dollars. One thousand dollars of the fine may not be
31 suspended or deferred unless the court finds the offender to be
32 indigent; and

33 (iii) By a court-ordered restriction under RCW 46.20.720; or

34 (b) In the case of a person whose alcohol concentration was at
35 least 0.15, or for whom by reason of the person's refusal to take a
36 test offered pursuant to RCW 46.20.308 there is no test result
37 indicating the person's alcohol concentration:

1 (i) By imprisonment for not less than one hundred twenty days nor
2 more than one year and one hundred fifty days of electronic home
3 monitoring. The offender shall pay for the cost of the electronic
4 monitoring. The county or municipality where the penalty is being
5 imposed shall determine the cost. The court may also require the
6 offender's electronic home monitoring device include an alcohol
7 detection breathalyzer, and may restrict the amount of alcohol the
8 offender may consume during the time the offender is on electronic home
9 monitoring. One hundred twenty days of imprisonment and one hundred
10 fifty days of electronic home monitoring may not be suspended or
11 deferred unless the court finds that the imposition of this mandatory
12 minimum sentence would impose a substantial risk to the offender's
13 physical or mental well-being. Whenever the mandatory minimum sentence
14 is suspended or deferred, the court shall state in writing the reason
15 for granting the suspension or deferral and the facts upon which the
16 suspension or deferral is based; and

17 (ii) By a fine of not less than one thousand five hundred dollars
18 nor more than five thousand dollars. One thousand five hundred dollars
19 of the fine may not be suspended or deferred unless the court finds the
20 offender to be indigent; and

21 (iii) By a court-ordered restriction under RCW 46.20.720.

22 (4) If a person who is convicted of a violation of RCW 46.61.502 or
23 46.61.504 committed the offense while a passenger under the age of
24 sixteen was in the vehicle, the court shall:

25 (a) In any case in which the installation and use of an interlock
26 or other device is not mandatory under RCW 46.20.720 or other law,
27 order the use of such a device for not less than sixty days following
28 the restoration of the person's license, permit, or nonresident driving
29 privileges; and

30 (b) In any case in which the installation and use of such a device
31 is otherwise mandatory, order the use of such a device for an
32 additional sixty days.

33 (5) In exercising its discretion in setting penalties within the
34 limits allowed by this section, the court shall particularly consider
35 the following:

36 (a) Whether the person's driving at the time of the offense was
37 responsible for injury or damage to another or another's property; and

1 (b) Whether at the time of the offense the person was driving or in
2 physical control of a vehicle with one or more passengers (~~(at the time~~
3 ~~of the offense)~~).

4 ~~((+5))~~ (6) An offender punishable under this section is subject to
5 the alcohol assessment and treatment provisions of RCW 46.61.5056.

6 ~~((+6))~~ (7) The license, permit, or nonresident privilege of a
7 person convicted of driving or being in physical control of a motor
8 vehicle while under the influence of intoxicating liquor or drugs must:

9 (a) If the person's alcohol concentration was less than 0.15, or if
10 for reasons other than the person's refusal to take a test offered
11 under RCW 46.20.308 there is no test result indicating the person's
12 alcohol concentration:

13 (i) Where there has been no prior offense within seven years, be
14 suspended or denied by the department for ninety days;

15 (ii) Where there has been one prior offense within seven years, be
16 revoked or denied by the department for two years; or

17 (iii) Where there have been two or more prior offenses within seven
18 years, be revoked or denied by the department for three years;

19 (b) If the person's alcohol concentration was at least 0.15, or if
20 by reason of the person's refusal to take a test offered under RCW
21 46.20.308 there is no test result indicating the person's alcohol
22 concentration:

23 (i) Where there has been no prior offense within seven years, be
24 revoked or denied by the department for one year;

25 (ii) Where there has been one prior offense within seven years, be
26 revoked or denied by the department for nine hundred days; or

27 (iii) Where there have been two or more prior offenses within seven
28 years, be revoked or denied by the department for four years.

29 For purposes of this subsection, the department shall refer to the
30 driver's record maintained under RCW 46.52.120 when determining the
31 existence of prior offenses.

32 ~~((+7))~~ (8) After expiration of any period of suspension,
33 revocation, or denial of the offender's license, permit, or privilege
34 to drive required by this section, the department shall place the
35 offender's driving privilege in probationary status pursuant to RCW
36 46.20.355.

1 (~~(+8)~~) (9)(a) In addition to any nonsuspendable and nondeferrable
2 jail sentence required by this section, whenever the court imposes less
3 than one year in jail, the court shall also suspend but shall not defer
4 a period of confinement for a period not exceeding five years. The
5 court shall impose conditions of probation that include: (i) Not
6 driving a motor vehicle within this state without a valid license to
7 drive and proof of financial responsibility for the future; (ii) not
8 driving a motor vehicle within this state while having an alcohol
9 concentration of 0.08 or more within two hours after driving; and (iii)
10 not refusing to submit to a test of his or her breath or blood to
11 determine alcohol concentration upon request of a law enforcement
12 officer who has reasonable grounds to believe the person was driving or
13 was in actual physical control of a motor vehicle within this state
14 while under the influence of intoxicating liquor. The court may impose
15 conditions of probation that include nonrepetition, installation of an
16 ignition interlock or other biological or technical device on the
17 probationer's motor vehicle, alcohol or drug treatment, supervised
18 probation, or other conditions that may be appropriate. The sentence
19 may be imposed in whole or in part upon violation of a condition of
20 probation during the suspension period.

21 (b) For each violation of mandatory conditions of probation under
22 (a)(i) and (ii) or (a)(i) and (iii) of this subsection, the court shall
23 order the convicted person to be confined for thirty days, which shall
24 not be suspended or deferred.

25 (c) For each incident involving a violation of a mandatory
26 condition of probation imposed under this subsection, the license,
27 permit, or privilege to drive of the person shall be suspended by the
28 court for thirty days or, if such license, permit, or privilege to
29 drive already is suspended, revoked, or denied at the time the finding
30 of probation violation is made, the suspension, revocation, or denial
31 then in effect shall be extended by thirty days. The court shall
32 notify the department of any suspension, revocation, or denial or any
33 extension of a suspension, revocation, or denial imposed under this
34 subsection.

35 (~~(+9)~~) (10) A court may waive the electronic home monitoring
36 requirements of this chapter when:

- 1 (a) The offender does not have a dwelling, telephone service, or
2 any other necessity to operate an electronic home monitoring system;
3 (b) The offender does not reside in the state of Washington; or
4 (c) The court determines that there is reason to believe that the
5 offender would violate the conditions of the electronic home monitoring
6 penalty.

7 Whenever the mandatory minimum term of electronic home monitoring
8 is waived, the court shall state in writing the reason for granting the
9 waiver and the facts upon which the waiver is based, and shall impose
10 an alternative sentence with similar punitive consequences. The
11 alternative sentence may include, but is not limited to, additional
12 jail time, work crew, or work camp.

13 Whenever the combination of jail time and electronic home
14 monitoring or alternative sentence would exceed three hundred sixty-
15 five days, the offender shall serve the jail portion of the sentence
16 first, and the electronic home monitoring or alternative portion of the
17 sentence shall be reduced so that the combination does not exceed three
18 hundred sixty-five days.

19 ~~((+10))~~ (11) An offender serving a sentence under this section,
20 whether or not a mandatory minimum term has expired, may be granted an
21 extraordinary medical placement by the jail administrator subject to
22 the standards and limitations set forth in RCW 9.94A.728(4).

23 ~~((+11))~~ (12) For purposes of this section:

24 (a) A "prior offense" means any of the following:

25 (i) A conviction for a violation of RCW 46.61.502 or an equivalent
26 local ordinance;

27 (ii) A conviction for a violation of RCW 46.61.504 or an equivalent
28 local ordinance;

29 (iii) A conviction for a violation of RCW 46.61.520 committed while
30 under the influence of intoxicating liquor or any drug;

31 (iv) A conviction for a violation of RCW 46.61.522 committed while
32 under the influence of intoxicating liquor or any drug;

33 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
34 9A.36.050 or an equivalent local ordinance, if the conviction is the
35 result of a charge that was originally filed as a violation of RCW
36 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
37 46.61.520 or 46.61.522;

1 (vi) An out-of-state conviction for a violation that would have
2 been a violation of (a)(i), (ii), (iii), (iv), or (v) of this
3 subsection if committed in this state;

4 (vii) A deferred prosecution under chapter 10.05 RCW granted in a
5 prosecution for a violation of RCW 46.61.502, 46.61.504, or an
6 equivalent local ordinance; or

7 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
8 prosecution for a violation of RCW 46.61.5249, or an equivalent local
9 ordinance, if the charge under which the deferred prosecution was
10 granted was originally filed as a violation of RCW 46.61.502 or
11 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
12 46.61.522; and

13 (b) "Within seven years" means that the arrest for a prior offense
14 occurred within seven years of the arrest for the current offense."

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ADOPTED 04/08/2003

15 On page 1, line 2 of the title, after "vehicle;" strike the
16 remainder of the title and insert "reenacting and amending RCW
17 46.61.5055; and prescribing penalties."

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